

Type of Decision									
Meeting Date	Tuesday, April 17, 2018				Report Date	Tuesday, April 11, 2018			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE - Request for Information MFIPPA									
Report #17/04/18 - 1203									

Subject: Legal Invoicing for HCM from January 2017 to April 2018 and Request for Copy of the Harassment Report provided to Council

RECOMMENDATION:

That Council receive the following as information.

Various decisions of the Information and Privacy Commissioner of Ontario (IPC) supports staff position that a detailed listing or copy of all legal voices will not be forthcoming. Nor will a copy of the Harassment complaint report. A letter to the requestor will be provided within the legislated of timeline of 30 days.

Harassment Complaint Report

As detailed in the notice/newsletter circulated recently extracted from the legal opinion received in respect to the harassment complaint report, the report is to remain confidential. The report was the result of a legislated requirement of an employer (Council) in response to a complaint from an employee under the *Occupational Health and Safety Act*. As such, the report is an employment related document and is and will remain confidential. Disclosing contents will result in legal action for members of Council or the public or employment sanctions for employees.

A request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) is not appropriate as MFIPPA does not apply to "Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest."

This exemption has been tested and tried at court and through appeals to the Information and Privacy Commissioner as referenced below to no avail. Employment records are protected documents.

Legal Fees

The amount of total legal fees for the time period requested is outlined below. This is a discretionary sharing of information and not a legal obligation under MFIPPA. Staff feel that it is important that members of the public know how much has been spent on unnecessary legal fees since the spring of 2017 mainly over the use of municipal roads for snowmobiles, the Algonquin Trail and the resulting harassment and code of conduct complaints.

As to the detailed breakdown of invoices, the dates, amounts and reasons for the costs; this will not be shared. The municipality does not have an obligation to divulge the specifics of legal invoices as they are considered “presumptively privileged” documents and are protected under solicitor-client privilege under MFIPPA.

The following are quotes from appeals of other decisions made to the IPC on similar request denials.

“...that the Supreme Court of Canada decision in Maranda specifically found that information in legal invoices is presumptively privileged and, therefore, qualifies for exemption unless it can be established that the information is neutral. Accordingly, in these circumstances, the burden of proof does not rest with the region, and the information is exempt unless I find that the information (or any portions of the information) is neutral.”
And...

“[54] The appellant also argues that he and the public ought to have access to this information because the region is a public organization, and that taxpayers ought to be able to review records that relate to where their money was spent. Although I accept the appellant’s general statement that the region is accountable to the public for monies spent, this does not mean that the presumptively privileged detailed lawyer’s invoices, sent to its client (the region) ought to be made public. The region has disclosed the total amount invoiced by the lawyers to deal with the identified legal action (brought by the appellant). I find that disclosure of the records at issue would not assist further in accountability. I also note that the public interest override in section 16 of the Act does not apply to the section 12 exemption. In addition, previous orders have rejected the appellant’s position that the taxpayers themselves are effectively the client for the purpose of the litigation.”¹⁷

BACKGROUND/EXECUTIVE SUMMARY:

The municipality of the United Townships of Head, Clara & Maria, Council and staff, conduct business in the most open and transparent manner possible. Sometimes, people don’t like what they are being told by staff and staff are forced to spend municipal dollars to obtain a legal opinion to support what they know to be accurate. Nothing over the past year and a half that has been referred to the municipal solicitor has been contrary to staff recommendation, or did not form staff recommendation. Education and training courses confirmed the advice and recommendations staff had already provided, but with a price tag.

There are numerous examples of this over 2017 and to date in 2018. The following information is to be included in the 2018 budget process which has been delayed due to personnel issues.

Total legal fees for this time period amount to \$50,532.73 for such services as:

1. Risk management and liability with respect to snow on municipal roads.
2. The rail trail issue and the legal responsibility of the municipality to protect its residents and the public under the Municipal Act.
3. The Algonquin Trail, the position of the County of Renfrew and municipal obligation and responsibility under the Planning Act.
4. Workplace Harassment Complaint investigation and report.
5. Code of Conduct Complaint investigations and reports.
6. Advice contracted by members of council without the approval of council.
7. Council training on the Municipal Code of Conduct and *Municipal Conflict of Interest Act*.
8. Other general business outlined below.

(Invoices allocated to Council members who contacted municipal legal counsel without municipal council authority will be reimbursed to the municipality. The total is not yet known.)

Specific admin advice which was questioned by individual council members or members of the public, referred to the municipal solicitor with staff advice being supported by legal counsel amounted to \$2,486.04.

1. The municipality has the obligation to maintain roads clear of snow. Municipal maintenance standards and liability.
2. General advice on the use of municipal roads for snowmobile trails. Rights of a lower tier vs. upper tier.
3. The requirement to advertise a council meeting when all members of council will be in attendance and an issue that is before council will be discussed.
4. The limits on access to the municipal solicitor by members of the public and members of council.
5. The ability of citizens to demand that council meet with them, add items to the agenda for council consideration.

Items referred to legal counsel outside the rail bed issue amounted to \$638.45:

1. ORNGE air contract renewal.
2. Workplace accident.
3. Workplace discipline and dismissal.
4. The risk of municipal access to the Ottawa River for ice fishing.

Payments to legal counsel for workplace/employee/council issues amounted to \$47,408.24. This included:

1. Code of Conduct complaints made against staff and members of Council investigations and reporting;
2. an investigation and report under the Municipal Workplace Harassment and Violence policy; and
3. council education and training in relation to the Code of Conduct and Municipal Conflict of Interest Act.

In addition to legal fees, the unwillingness of members of the public and/or individual council members to respect admin reports has caused significant lost time for employees completing additional research and support for the initial advice presented to council; instead of completing the day to day operations of the municipality. Some work is backlogged months due to this increased and unnecessary workload caused by the rail trail issue and the subsequent code of conduct and harassment complaints.

Options/Discussion:

For your information.

Supporting Documentation

1. **ORDER MO-3385** - Appeal MA16-62 - The Corporation of the Municipality of St. Charles - November 30, 2016, IPC website at <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/214183/index.do?r=AAAAAQAwlm11bmljaXBhbClgYW5kICJsZWdhbCBpbmZvaWNlIiBhbmQglmhcmFzc21bnQiaQ>
2. From **INTERIM ORDER MO-2346-I** - Appeal MA07-253 - Town of Erin at <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/133092/index.do?r=AAAAAQAgIm11bmljaXBhbClgYW5kICJsZWdhbCBpbmZvaWNlIiAB>
3. From MO2885 <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/134089/index.do?r=AAAAAQAgIm11bmljaXBhbClgYW5kICJsZWdhbCBpbmZvaWNlIiAB>

4. MO 3445 - ORDER MO-3445 - Appeal MA16-274 - Town of South Bruce Peninsula - May 24, 2017 - <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/232320/index.do?r=AAAAAQAgIm11bmljaXBhbClqYW5kICJsZWdhbCBpbmZvaWNlIiAB>
5. ORDER MO-2211 - Appeal MA-060170-1 - The Corporation of the City of London - <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/132796/index.do?r=AAAAQAAsVGhllENvcnBvcmlF0aW9uIG9mIHRoZSBDaXR5IG9mIExvbmRvbiAtIDlyMTEB>

Others Consulted:

The Municipal Freedom of Information and Protection of Privacy Act
 Information and Privacy Commissioners Website and reports
 Various training materials

Approved and Recommended by the Clerk

Melinda Reith,
 Municipal Clerk

Melinda Reith

From the opening letter to the harassment complaint report provided to council...

Confidentiality Caution

This report and its contents are to be held in the strictest confidence and are not to be shared, disseminated or disclosed in any fashion, whether orally, in writing, electronically, or in any form without the express permission of the persons to whom it is addressed unless required by law. Failure to abide by these confidentiality and non-disclosure provisions will be treated as a disciplinary matter, for employees of the Corporation of the United Townships of Head, Clara and Maria, and/or as a matter for potential civil proceedings for damages and injunctive relief against any person or party involved with such unauthorized disclosure.

Section 14 (3) (d) of MFIPPA states...

“Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, (d) relates to employment or educational history;

Section 52 (3) states that...

Same(3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest. 1995, c. 1, s. 83.